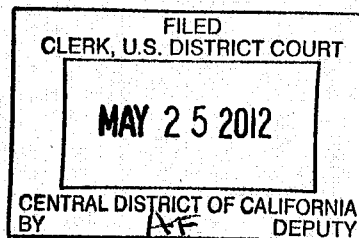


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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **KRZYSZTOF ZAZIRSKI,**

12
13 **Plaintiff,**

14 **vs.**

15 **NEW ALBERTSON'S, INC.,**
16 **AMERICAN STORES COMPANY, LLC**
17 **and DOES 2 through 40, Inclusive,**

18 **Defendant(s).**

CASE NO: CV12-4202 CAS(PJW)

Assigned for all purposes to:
Honorable Christina A. Snyder
Dept. 5

**STIPULATED ORDER GOVERNING
THE DESIGNATION AND
HANDLING OF CONFIDENTIAL
MATERIALS**

**[Discovery related stipulation referred to
Honorable Patrick J. Walsh]**

Date Action Filed: February 6, 2012
Date Action Removed: May 14, 2012
Trial Date: None Set

21
22
23 *Under seal filings governed by*
24 *Local Rule 79-5.*
25
26
27
28

PJW

1 The dispute in this action involves allegations relating to store policies of the
2 defendants, which includes highly confidential and private information. During the
3 course of this litigation, highly confidential information will need to be shared through
4 discovery or otherwise between the parties and the Court. So that both parties can
5 continue to protect their proprietary and private information involving descriptions of
6 business methods, retail operations and money handling policies and personnel
7 information as to the plaintiff and possible tangentially involved consumers, the parties
8 propose this stipulation and order governing the designation and handling of confidential
9 materials ("Confidentiality Order").

10 The parties plaintiff Krzysztof Zazirski ("Plaintiff") on the one hand, and
11 defendants American Stores Company, LLC and New Albertson's, Inc. ("Defendants")
12 on the other hand by and through their respective counsel, hereby stipulate and agree
13 that any documents, information, testimony or transcripts ("Material") deemed by any
14 Party or by any person or entity that is not a party to this action ("Third-Party") to be
15 confidential, proprietary, trade secret and/or subject to a right of privacy ("Confidential
16 Information"), shall be designated and protected according to the following terms and
17 conditions:

18 **A. DESIGNATING PROTECTED MATERIAL**

19 Any Party or Third-Party may determine in good faith whether any Material
20 should be designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
21 EYES ONLY" ("Designating Party"). However, such good faith belief must be based
22 on the fact that such information has not been made public and the Designating Party
23 must have a good faith belief that if such information is disclosed it will have the effect
24 of causing harm to a Party's competitive position or otherwise impinge upon a party's
25 right to privacy. Parties and Third-Parties shall also have the right to designate as
26 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," Material
27 produced, served or provided by other Parties or Third-Parties, in which case the
28 Designating Party shall notify the other Parties and/or Third-Parties of the Material that

1 should be treated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
2 ONLY" pursuant to this Confidentiality Order. Any Material, or any part thereof,
3 designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
4 ONLY" shall be used only for the preparation and trial of this action, including
5 discovery, pre-trial proceedings, trial, appellate proceedings and petitions for
6 reconsideration and/or review, and shall not be used for any business, commercial or
7 other purpose. Except as otherwise provided in this Confidentiality Order, or as
8 otherwise stipulated or ordered, any Material that a Party or Third-Party deems
9 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" must be
10 clearly so designated. Designation in conformity with this Confidentiality Order
11 requires the following:

12 1. For Material in documentary form (apart from transcripts of depositions or
13 other pretrial or trial proceedings), the Designating Party producing the documents shall
14 affix the legend "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES
15 ONLY" at the top or bottom or by watermarking of each page of a document that
16 contains Confidential Information. The Designating Party that makes original
17 documents available for inspection need not designate them for protection under this
18 Confidentiality Order until after the inspecting Party has indicated which documents it
19 would like copied and produced. During the inspection and before the designation, all
20 of the documents made available for inspection shall be deemed "CONFIDENTIAL-
21 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents
22 it wants copied and produced, the Designating Party must determine which documents
23 qualify for protection under this Confidentiality Order; then, before producing the
24 specified documents, the producing Party must affix the legend "CONFIDENTIAL" or
25 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page of the documents that
26 contain Confidential Information. If, after production, a Party or Third-Party designates
27 as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY"
28 documents not previously designated, then any Party in possession of such documents

1 shall designate the documents as such in accordance with this Confidentiality Order.

2 2. For testimony given in deposition or in other pretrial or trial proceedings,
3 the Designating Party shall identify either (a) on the record before the close of the
4 deposition, hearing or other proceeding, or (b) within 20 days after receiving the
5 transcript of such deposition, hearing or other proceeding, all portions of the testimony
6 that it wants to designate as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'
7 EYES ONLY." Only those portions of the testimony that are designated for protection
8 during the deposition or other pretrial or trial proceedings, or within the 20 days after
9 receipt of the transcript of such testimony, shall be covered by the provisions of this
10 Confidentiality Order. The court reporter shall affix to the top or bottom of each page of
11 a transcript containing Confidential Information the legend "CONFIDENTIAL" or
12 "CONFIDENTIAL-ATTORNEYS' EYES ONLY," as instructed by a Designating
13 Party's instructions.

14 3. For any Material produced in other than documentary form and for any
15 other tangible items, the Designating Party producing such Material or tangible item
16 shall affix in a prominent place on the exterior of the container or containers in which
17 the material or item is stored the legend "CONFIDENTIAL" or "CONFIDENTIAL-
18 ATTORNEYS' EYES ONLY." If only portions of the information or item warrant
19 protection, the Designating Party, to the extent practicable, shall identify the protected
20 portions. If, after production, a Party or Third-Party designates as "CONFIDENTIAL"
21 or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" any non-documentary Material or
22 tangible item not previously designated, then any Party in possession of such Material or
23 tangible item shall designate it as such in accordance with this Confidentiality Order.

24 **B. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION**

25 1. Subject to paragraph B(3) below, all Material designated as
26 "CONFIDENTIAL" may be disclosed only to:

27 a. Counsel for a Party and in-house counsel for Defendants responsible
28 for overseeing this action, as well as their employees and other persons or entities

1 retained by such counsel to provide litigation-related services;

2 b. Experts, consultants and other independent contractors retained or
3 employed to consult with, advise or assist counsel for a Party in the preparation or trial
4 of this case, as well as their employees;

5 c. The Parties to this action and their current directors, officers and
6 employees;

7 d. Witnesses who are being prepared by counsel to give testimony at a
8 deposition or at trial, or who are being examined by counsel at a deposition or at trial;
9 and

10 e. Personnel employed by the United States District Court for the
11 Central District of California or any appellate court, including, the Ninth Circuit Court
12 of Appeals, appellate court justices, court reporters, clerks and administrative support
13 personnel.

14 2. A Designating Party may designate as "CONFIDENTIAL-ATTORNEYS
15 EYES ONLY" any Material that contains private, confidential, proprietary and/or trade
16 secret information that is so sensitive that such Material should not be disclosed to the
17 directors, officers or non-attorney employees of other Parties. Material designated as
18 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" may be disclosed only to those
19 persons and entities identified in paragraph B(1) (a), (b) and (e) above.

20 3. Parties shall take appropriate measures to ensure that all persons permitted
21 access to Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-
22 ATTORNEYS' EYES ONLY" under paragraph B(1) (b), (c) or (d) of this
23 Confidentiality Order have agreed, prior to reviewing any such Confidential
24 Information, to be bound by the terms and conditions hereof with respect to the
25 restricted disclosure and use of such Confidential Information. Prior to receiving any
26 Confidential Information, those persons shall sign a copy of the statement attached
27 hereto as Exhibit A, agreeing to be bound by the terms of this Confidentiality Order and
28 submitting to the jurisdiction of the United States District Court for the Central District

1 of California to enforce this Confidentiality Order. The Party who obtains any such
2 signed statements shall retain possession of the statements and shall provide a copy of
3 the statements at the written request of another Party. However, under no circumstances
4 shall any Party be required to disclose the identity or existence of any expert, consultant
5 or witness until otherwise required to do so by law or order of the United State District
6 Court for the Central District of California.

7 **C. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 If, at any time during the pendency of this action, counsel for any Party wishes to
9 challenge a Designating Party's designation of Material as containing Confidential
10 Information, and to exclude such Material from the provisions of this Confidentiality
11 Order, the Party may proceed by petition before the United States District Court for the
12 Central District of California. The Parties shall first meet and confer in a good faith
13 effort to resolve informally any disputes concerning this Confidentiality Order before
14 bringing any such petition before the United States District Court for the Central District
15 of California. The designating party bears the burden of establishing the appropriateness
16 of a confidentiality designation. *See Foltz v. State Farm Mutual Automobile Insurance*
17 *Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003)

18 **D. INADVERTENT OR UNAUTHORIZED DISCLOSURE OF**
19 **CONFIDENTIAL INFORMATION**

20 Inadvertent production without prior designation of any Confidential or privileged
21 Information shall be without prejudice to a Designating Party's right to later file a
22 petition seeking to have the Confidential or privileged Information designated as
23 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," or to any
24 other Party's right to argue that production of such Confidential Information constitutes
25 a waiver under applicable law of the right to designate any Confidential Information as
26 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," or that such
27 material must be returned as privileged.

1 **E. MAINTENANCE AND FILING OF CONFIDENTIAL INFORMATION**

2 1. All Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-
3 ATTORNEYS' EYES ONLY," shall be kept in secure facilities. A "secure facility" is a
4 place where access is restricted to only to those designated persons set forth in
5 paragraphs B(1)(a) and (b) of this Confidentiality Order. Such requirement is not
6 applicable to the Court.

7 2. The Parties recognize the Court is a public institution where the sealing of
8 Court records is the exception rather than the rule. As such, the Parties agree that when
9 utilizing Confidential Information in a proceeding before the Court or in submission of
10 any documents to the Court with a pleading or in evidence, that each party shall make
11 every effort to minimize the number of documents such Party requests to be sealed, and
12 attempt only to seal the portion of the document or pleading that includes Confidential
13 Information. *See L.R. 79-5, pgw*

14 3. If a party wishes to file a document under seal, that party shall first file a
15 written request for a sealing order setting forth the good cause for such sealing, and
16 which shall be accompanied by a proposed order that is narrowly tailored as specified
17 above. If the sole ground is that the opposing or non-party has designated the document
18 as CONFIDENTIAL, that opposing or non-party shall file a declaration establishing
19 good cause for the sealing along with a proposed order, or shall withdraw the
20 designation. Any declaration must be filed within five days of service on the opposing
21 party of the request for a sealing order.

22 4. If previously sealed documents are ordered unsealed for use at trial, counsel
23 for the party offering the document as evidence shall identify which entries to the docket
24 represents the exhibits actually received, within two business days after the conclusion
25 of the trial.

26 **F. CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED**
27 **PRODUCED IN OTHER LITIGATION**

28 1. The terms of this Confidentiality Order shall apply to all manner and means

1 of discovery, including subpoenas *duces tecum*.

2 2. In the event that a Party is served with a subpoena that seeks to compel the
3 production of Material designated as "CONFIDENTIAL" or "CONFIDENTIAL-
4 ATTORNEYS' EYES ONLY," the Party upon whom the subpoena is served shall give
5 written notice of the subpoena to the Designating Party at least seven (7) calendar days
6 before the production date (or, if the subpoena provides less than seven (7) days notice,
7 within one (1) business day after service of the subpoena). The Designating Party may
8 then file a petition or motion to quash the subpoena and/or obtain such other relief as
9 will protect the confidential nature of the documents. If the Designating Party files such
10 a petition before the production date specified in the subpoena, the Party upon whom the
11 subpoena is served shall not produce the requested documents until after the United
12 States District Court for the Central District of California or appropriate court has ruled
13 on the petition or motion.

14 **G. FINAL DISPOSITION**

15 Within thirty (30) days after the final termination of this action, counsel for each
16 Party shall destroy any and all Material designated as "CONFIDENTIAL" or
17 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" and shall destroy all copies, digests
18 or summaries which have been made of, or prepared from, such Confidential
19 Information, and shall provide counsel for the Party or Third-Party who produced such
20 Material (upon request) with a declaration under penalty of perjury attesting to such
21 return and/or destruction. For purposes of this Confidentiality Order, the term "final
22 termination" shall refer to the time after any final order or award is entered in this
23 action, with no timely petition for reconsideration or petition for review having been
24 filed, or, if any such petition is filed, after a final decision is rendered by the United
25 States District Court or any appellate court with no further petition or appeal pending or
26 possible.

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1 **H. MISCELLANEOUS**

2 1. Subject to the Provision of Paragraph F(2), above, nothing in this
3 Confidentiality Order shall be construed to relieve any Party from the obligation to
4 timely respond to a discovery request, nor shall this Confidentiality Order be construed
5 as a waiver of the right to assert any objection to a discovery request.

6 2. This Confidentiality Order is intended to regulate the production and
7 dissemination of Confidential Information during the entirety of this action, and
8 thereafter shall remain in full force and effect, unless and until modified, superseded or
9 terminated by written agreement of all Parties or by order of the United States District
10 Court. This Confidentiality Order shall become effective as among the Parties when
11 executed by all Parties, with or without the District Court's entry of the order. The
12 United States District Court for the Central District of California shall retain jurisdiction
13 to enforce the provisions of this Confidentiality Order and to enter amendments,
14 modifications and additions to this Confidentiality Order as the United States District
15 Court for the Central District of California may from time to time deem appropriate
16 upon noticed motion of a Party or upon the United States District Court for the Central
17 District of California's own motion upon notice to the parties.

18 3. Counsel for both parties shall make every attempt to redact exhibits for use
19 at trial as opposed to marking such exhibits "CONFIDENTIAL," so as to reduce the
20 burden of sealing the Court during trial.

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1 4. Nothing in this Confidentiality Order shall be construed as improperly
2 limiting the rights of third parties involved in other actions to conduct discovery or to
3 limit the subpoena power of another court unless a Court grants a properly noticed
4 motion for protective order in such other proceedings.

5 SO STIPULATED:

6 DATED: May 24, 2012

DORSEY & WHITNEY LLP

7
8
9 By: 

10 Mandana Massoumi
11 Bryan M. McGarry
12 Attorneys for Defendants
13 AMERICAN STORES COMPANY,
14 LLC and NEW ALBERTSON'S, INC.

15 DATED: May 24th, 2012

16 Law Offices of Kevin C. Boyle

17 By: 

18 Kevin C. Boyle
19 Attorney for Plaintiff
20 KRZYSZTOF ZAZIRSKI

21
22 IT IS SO ORDERED.
23
24 DATED MAY 25, 2012.

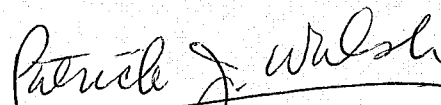
25 
26 U.S. MAGISTRATE JUDGE
27
28

EXHIBIT A

AGREEMENT TO BE BOUND BY CONFIDENTIALITY ORDER

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the STIPULATED ORDER GOVERNING THE DESIGNATION AND HANDLING OF CONFIDENTIAL MATERIALS (the "Order") entered in Zazirski v. New Albertson's, Inc., United States District Court, Central District of California, and that I have read the Order. I understand the terms of the Order, I agree to be fully bound by the Order, and I hereby submit to the jurisdiction of the California state or federal courts for purposes of enforcement of the Order.

DATED: _____ SIGNATURE: _____

NAME: _____